



City of Dublin

Office of the City Manager  
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# Memo

**To:** Members of Dublin City Council

**From:** Marsha I. Grigsby, City Manager 

**Date:** May 1, 2014

**Initiated By:** Jeremiah Gracia, Economic Development Administrator

**Re:** Ordinance 38-14 – Development and Real Estate Purchase Agreement for Everhart Advisors

## Background

Economic Development staff has been in discussion with Dublin-based Everhart Financial Group, Inc. (dba Everhart Advisors) about their interest in building a new corporate headquarters in Dublin. Everhart Advisors is an independent investment-consulting firm providing retirement plan advisory services to corporations, and wealth advisory services to corporate executives and other individuals.

Everhart's proposed new corporate headquarters will be approximately 10,000 square feet. The company currently leases 3,300 square feet at 5890 Venture Drive. The construction of a new corporate headquarters facility demonstrates Everhart's long-term commitment to Dublin. The company has 15 employees and expects to grow to 25+ employees by 2019.

The company previously identified four, contiguous and small properties located at the intersection of Post Road and Perimeter Drive for their new construction. The execution of an economic development agreement related to that site was authorized by Ordinance 10-14. After continued real estate purchase negotiations, the company decided to explore alternative sites for their new construction both within and outside Dublin corporation limits.

Economic Development staff assisted with their search in Dublin and identified a City-owned 1.86 acre parcel located off the east side of Commerce Parkway and the north side of Emerald Parkway – adjacent to Delta Energy, LLC. The property is currently owned by the City and zoned for Suburban Office/Institutional District.

The proposed development and real estate purchase agreement includes selling the entire 1.86 acre parcel to Everhart Advisors. The purchase price is \$187,000 less the City's location grant of \$37,500 for a net sale price of \$149,500. In addition, the City is also offering a withholdings performance incentive for 2014-2016 capped at \$5,000 per year for the term of the agreement. The City estimates it would net approximately \$225,000 in income tax withholdings over the agreement's three-year term should the company grow according to expectations.

This development and real estate purchase agreement shall supersede Ordinance 10-14 that was passed on February 10, 2014.

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**Recommendation**

Staff recommends Council passage of Ordinance 38-14 at the second reading/public hearing on May 19, 2014. Please contact Jeremiah Gracia or Colleen Gilger with any questions.

# RECORD OF ORDINANCES

**38-14**

Ordinance No. \_\_\_\_\_

Passed \_\_\_\_\_

20 \_\_\_\_\_

**AN ORDINANCE AUTHORIZING THE PROVISION OF CERTAIN INCENTIVES TO EVERHART FINANCIAL GROUP INC., DBA EVERHART ADVISORS TO INDUCE IT TO RETAIN A MAIN OFFICE AND ASSOCIATED OPERATIONS AND WORKFORCE WITHIN THE CITY; AND AUTHORIZING THE EXECUTION OF A DEVELOPMENT AND REAL ESTATE PURCHASE AGREEMENT.**

**WHEREAS**, consistent with its Economic Development Strategy (the "*Strategy*") approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated Strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and create and preserve jobs and employment opportunities within the City; and

**WHEREAS**, Everhart Financial Group Inc., DBA Everhart Advisors (the "*Company*") recently performed a comprehensive examination of its workforce needs, and based on the results of this examination, and induced by and in reliance on the economic development incentives provided in the proposed Development and Real Estate Purchase Agreement (as described below), the Company is desirous of constructing a facility within the City to retain a main office and associated operations and workforce within the City; and

**WHEREAS**, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide for certain economic development incentives to the Company, as described in the proposed Development and Real Estate Purchase Agreement; and

**WHEREAS**, this Council has determined to offer the economic development incentives, the terms of which are set forth in a substantially final form of Development and Real Estate Purchase Agreement presently on file in the office of the Clerk of Council, to induce the Company to construct a facility and retain a main office and associated operations and workforce, all within the City, which will result in the preservation of existing jobs and employment opportunities within the City and the possible creation of new jobs and employment opportunities within the City, thereby improving the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the City of Dublin, State of Ohio, \_\_\_\_\_ of the elected members concurring, that:

Section 1. The Development and Real Estate Purchase Agreement by and between the City and the Company, in the form presently on file with the Clerk of Council, providing for, among other things, the provision of certain economic development incentives in consideration for the Company's agreement to construct a facility within the City for the retention of a main office and associated operations and workforce within the City, which will result in the preservation of existing jobs and employment opportunities within the City and the possible creation of new jobs and employment opportunities within the City, is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, is hereby authorized to execute that Development and Real Estate Purchase Agreement, provided further that the approval of changes thereto by that official,

# RECORD OF ORDINANCES

Ordinance No. 38-14

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Passed \_\_\_\_\_, 20\_\_\_\_

and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to the Development and Real Estate Purchase Agreement, which amendments are not inconsistent with this Ordinance and not substantially adverse to this City.

Section 2. This Council further hereby authorizes and directs the City Manager, the Director of Law, the Director of Finance, the Clerk of Council, or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 3. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in open meetings of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Revised Code.

Section 4. This Ordinance shall be in full force and effect on the earliest date permitted by law.

Signed:

\_\_\_\_\_  
Mayor - Presiding Officer

Attest:

\_\_\_\_\_  
Clerk of Council

Passed: \_\_\_\_\_, 2014

Effective: \_\_\_\_\_, 2014

**ECONOMIC DEVELOPMENT AND**  
**REAL ESTATE PURCHASE AGREEMENT**

**THIS ECONOMIC DEVELOPMENT AND REAL ESTATE PURCHASE AGREEMENT** (this "*Agreement*") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2014 (the "*Effective Date*"), by and between **EVERHART FINANCIAL GROUP INC.**, DBA Everhart Advisors an Ohio corporation (the "*Company*") whose mailing address is 5890 Venture Drive, Suite D, Dublin, Ohio 43017, and the **CITY OF DUBLIN**, an Ohio municipal corporation (the "*City*"), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter whose mailing address is 5200 Emerald Parkway, Dublin, Ohio 43017. The City and the Company may hereinafter be referred to individually as a "*Party*", or collectively as the "*Parties*."

**Background Information**

WHEREAS, consistent with its Economic Development Strategy (the "*Strategy*") approved by Dublin City Council Resolution No. 07-94 adopted on June 20, 1994, and the updated Strategy approved by Dublin City Council Resolution No. 30-04 adopted on July 6, 2004, the City desires to encourage commercial office development and create and preserve jobs and employment opportunities within the City; and

WHEREAS, based on the results of the Company's recent comprehensive examination of its business needs, and induced by and in reliance on the economic development incentives provided in this Agreement, the Company with headquarters located at 5890 Venture Drive, Dublin, Ohio consisting of a 3,300 square foot office is desirous of building new headquarters in the City to consist of an approximately 10,000 square feet building (the "*Building*") to enable the Company to retain a main office and associated operations and expand its workforce and operations within the City; and

WHEREAS, to facilitate the Company's proposed building of its new headquarters and to promote the retention and potential creation of employment opportunities within the City, the City has agreed to the sale of a 1.866 acres, more or less, parcel of land located off of Commerce Parkway, north of Emerald Parkway and east of Perimeter Drive, and commonly known as Franklin County Tax Parcel 273-012334 (the "*Property*") for a purchase price of One Hundred Forty-Nine Thousand Five Hundred Dollars (\$149,500), which is calculated as the agreed-upon fair market value of the Property (One Hundred Eighty-Seven Thousand Dollars (\$187,000), less the City's Location Grant of Thirty-Seven Thousand Five Hundred Dollars (\$37,500) (the Property description-Exhibit "A"); and

WHEREAS, the City hired a professional appraiser to complete an appraisal report for the Property on April 1, 2014 and the report valued the Property at One Hundred Ninety Thousand Dollars (\$190,000) to Two Hundred Twenty Thousand Dollars (\$220,000); and

WHEREAS, pursuant to Ordinance No. 38-14 passed on \_\_\_\_\_, 2014 (the "*Ordinance*"), the City has determined to offer the economic development incentives described

herein to induce the Company to construct a facility within the City for the retention of a main office and associated operations and workforce within the City, which will result in the creation of new jobs and employment opportunities and the preservation of existing jobs and employment opportunities to improve the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution.

## **STATEMENT OF AGREEMENT**

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Company covenant, agree and obligate themselves to the foregoing Background Information and as follows:

### **Article I** **Economic Development**

**Section 1. Company's Agreement to Construct a Facility and Retain Its Operations and Workforce Within the City.** In consideration for the economic development incentives to be provided by the City herein, the Company agrees that it will construct a facility within the City for the retention of a main office and associated operations and workforce within the City, all consistent with the terms of this Agreement. The Company expects to retain seventeen (17) full-time positions within the City, and to create five (5) additional full-time employee positions within the City by December 31, 2016. The total current payroll is approximately Two Million Dollars (\$2,000,000) and is expected to grow to at least Three Million Five Hundred Dollars (\$3,500,000) by the end of 2014; at least Four Million Dollars (\$4,000,000) by the end of 2015; and at least Four Million Five Hundred Thousand Dollars (\$4,500,000) by the end of 2016. The total estimated payroll withholdings to the City over the three year term of this Agreement is approximately Two Hundred Forty Thousand Dollars (\$240,000).

**Section 2. City Agreement to Provide Incentives.**

(a) **General.** In consideration for the Company's agreement to construct a facility within the City for the retention of a main office and associated operations and workforce within the City, the City agrees to provide economic development incentives to the Company in accordance with this Section.

(b) **Workforce Creation Incentive.**

(i) **Calculation of Actual Payroll Withholding Taxes.** On or before March 15 of each of the years 2015 through 2017, the City shall calculate the actual payroll withholding taxes collected and received by the City from all Employees (as defined below) during the then preceding calendar year and in respect of that preceding calendar year. For purposes of that calculation, the Company acknowledges and agrees that the total amount of actual payroll withholding taxes in respect of any calendar year shall be determined based solely upon the amount of payroll withholding tax payments actually received by the City from the Company during that calendar year. The Company agrees that the determination of whether to include in

such calculation any amount received by the City in respect of any calendar year but following the conclusion of that calendar year, shall be solely within the discretion of the City. For purposes of this Section 2, “Employees” shall include only those individuals employed by the Company and working within the City.

(ii) Information Relating to Employees. The Company agrees that, in accordance with the Dublin City Code, the annual payroll reconciliation and related W-2 forms relating to its Employees will be provided to the City prior to February 28 of each calendar year.

(iii) Employer Identification Number. The Company’s Employer Identification Number is \_\_\_\_\_. The Company agrees that if the Employer Identification Number changes at any time during the term of this Agreement, the Company will notify the City of such change, including the new Employer Identification Number, within thirty (30) days of the occurrence of such change.

(iv) Annual Incentive Payments to the Company. If the actual payroll withholding taxes collected and received by the City pursuant to subsection 2(b)(i) during the then preceding calendar year and in respect of that preceding calendar year from all Employees, net of refunds (such amount being referred to as the “Actual Withholdings”), equal or exceed the Target Withholdings (as defined in subsection 2(b)(v)) for that preceding calendar year, the City shall, on or before April 15 of the then current calendar year, pay to the Company, solely from nontax revenues (as defined in subsection 2(d)), an amount equal to the Annual Incentive Payment (as defined in subsection 2(b)(v)); *provided, however*, that (1) the City shall not be required pursuant to this subsection 2(b) to remit an Annual Incentive Payment to the Company in excess of the Annual Incentive Payment in any calendar year, and (2) the aggregate amount of all Annual Incentive Payments remitted pursuant to this subsection 2(b) by the City to the Company for calendar years 2014-2016 shall not exceed Fifteen Thousand and 00/100 Dollars (\$15,000.00).

(v) Target Withholdings and Annual Incentive Payment. The Target Withholdings and Annual Incentive Payment for each of the calendar years 2014 through 2016 shall be:

<u>Calendar Year</u>	<u>Target Withholdings</u>	<u>Annual Incentive Payment</u>
2014	\$ 70,000	\$ 5,000
2015	80,000	5,000
2016	90,000	5,000

(vi) Forfeiture of Right to Receive Workforce Creation Incentive Payment. The Company agrees and acknowledges that Annual Incentive Payments provided for in subsection 2(b) are being made by the City to the Company in consideration for the Company’s agreement to construct a facility within the City for the retention of a main office and associated operations and workforce within the City and to create additional employment opportunities and retain existing employment opportunities, all within the City. The City and Company further agree that if the Target Withholdings requirement is not met for any given calendar year as set forth in subsection 2(b)(v), the City shall not be obligated to make an Annual Incentive Payment

to the Company for the calendar year in respect of which the Target Withholdings requirement was not satisfied. Failure to satisfy the Target Withholdings requirement in respect of any one calendar year does not prohibit the Company from receiving an Annual Incentive Payment for any subsequent calendar year in respect of which the Target Withholdings requirement is satisfied.

(c) Method of Payment. The payments to be paid to the Company as provided in this Section 2 shall be made by the City to the Company by electronic funds transfer or by such other manner as is mutually agreed to by the City and the Company.

(d) City's Obligation to Make Payments Not Debt; Payments Limited to Non-Tax Revenues. Notwithstanding anything to the contrary herein, the obligations of the City pursuant to this Agreement shall not be a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and the Company shall have no right to have excises or taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City herein. Consistent with Section 13 of Article VIII, Ohio Constitution, any payments or advances required to be made by the City pursuant to this Section 2 shall be payable solely from the City's non-tax revenues. Further, since Ohio law limits the City to appropriating monies for such expenditures only on an annual basis, the obligation of the City to make payments pursuant to this Section 2 shall be subject to annual appropriations by the City Council and certification by the Director of Finance of the City as to the availability of such non-tax revenues. For purpose of this Agreement, "*nontax revenues*" shall mean, all moneys of the City which are not moneys raised by taxation, to the extent available for such purposes, including, but not limited to the following: (i) grants from the United States of America and the State; (ii) payments in lieu of taxes now or hereafter authorized to be used for the purposes by State statute; (iii) fines and forfeitures which are deposited in the City's General Fund; (iv) fees deposited in the City's General Fund from properly imposed licenses and permits; (v) investment earnings on the City's General Fund and which are credited to the City's General Fund; (vi) investment earnings of other funds of the City that are credited to the City's General Fund; (vii) proceeds from the sale of assets which are deposited in the City's General Fund; (viii) rental income which is deposited in the City's General Fund; and (ix) gifts and donations.

## ARTICLE II REAL ESTATE PURCHASE

**Section 3. Sale of Real Property.** The City hereby agrees to sell to the Company's affiliated entity, \_\_\_\_\_ ("*Purchaser*"), and Purchaser hereby agrees purchase the Property from the City, upon the terms and conditions of this Agreement for the sum of One Hundred Forty-Nine Thousand Five Hundred Dollars (\$149,500). The net price of the Property is calculated as follows: One Hundred Eighty-Seven Thousand Dollars (\$187,000) less the City's Location Grant of Thirty Seven Thousand Five Hundred Dollars (\$37,500).

**Section 4. Reimbursement to City.** Purchaser agrees to meet all of the following requirements:

(a) Construct on or before September 1, 2016 (which date shall be extended day for day for any construction delays beyond the Company's reasonable control) evidenced by at least a conditional occupancy permit for a Ten Thousand (10,000) square foot office building on the Property;

(b) For seven years from the date an occupancy permit is provided (the "Grant Period"), the Company shall continuously occupy a minimum Six Thousand Six Hundred Sixty-Six (6,666) square feet or two-thirds ( $2/3^{\text{rd}}$ ) of the Building;

(c) Purchaser must maintain continuous ownership of the Property and Building during the Grant Period.

If Purchaser or the Company shall fail to meet any of the conditions in this section, the City, may, in its sole discretion, request full reimbursement of the Location Grant. Within thirty (30) days receipt of notice from the City for a breach of a condition herein, the Company shall reimburse the City an amount equal to the requested portion of the Location Grant. Should the Company fail to do so the Parties agree the City is entitled to file an appropriate lien on the property for the amount demanded (Lien form-Exhibit "B").

#### **Section 5. Contingencies.**

(a) Environmental Inspection. Up and until October 1, 2014, the City agrees to permit Purchaser, Purchaser's lender and any qualified, professional environmental consultant or consultants retained by Purchaser or its prospective lender(s) to conduct, at the expense of Purchaser, an environmental site assessment of the Property. Purchaser agrees to indemnify and hold harmless the City from any injury or damage to persons, property and crops caused by such inspection and to restore the Property to substantially the condition in which the same were found before such inspection. If such assessment is obtained and the consultant recommends further inspection to determine the extent of suspected contamination or recommends remedial action, Purchaser, at its option, may notify the City in writing, within the above-specified period, that this Agreement is null and void. Failure of Purchaser to deliver written notice and copy of the environmental report(s) within such time period shall constitute a waiver of Purchaser's right to terminate this Agreement pursuant to this provision. The indemnification herein shall survive the termination of this Agreement.

(b) Property Inspection. Purchaser, at its own expense, shall have until October 1, 2014 to have the Property including any and all improvements, fixtures and equipment contained thereon, if any, inspected. Purchaser shall be permitted to complete any inspection including but not limited to soil sampling and testing, soil boring and soil compaction tests, and inspections regarding the availability of necessary utilities of the Property. The City shall cooperate in making the Property reasonably available for such inspection(s). Purchaser agrees to indemnify and hold the City harmless from any injury or damage to persons, property and crops caused by such inspection(s) and to restore the Property to substantially the condition in which the same was found before such inspection. If Purchaser is not, in good faith, satisfied with the condition of the Property as disclosed by such inspection(s), Purchaser may terminate this Agreement by delivering written notice of such termination to the City, along with a written copy of such

inspection report(s), within the time period specified above, such notice and report(s) shall specify the unsatisfactory conditions. Failure of Purchaser to deliver written notice and copy of the inspection report(s) within such time period shall constitute a waiver of Purchaser's right to terminate this Agreement pursuant to this provision. The indemnification herein shall survive the termination of this Agreement.

(c) Survey Approval. Purchaser, at its own expense, shall have until October 1, 2014 to have the Property surveyed and approved. The dimensions and boundaries shall be generally consistent with the Exhibits attached hereto by the Parties. Promptly following the approval of the Parties' approval of the general boundaries and dimensions of the Property (but in no event later than ten (10) business days prior to the closing). Purchaser shall, at its sole cost and expense, deliver to the City and the Title Company for approval, the boundary surveys (the "Survey") and legal description of the Property prepared by a surveyor, registered in the State of Ohio (the "Surveyor"), together with any other documents legally necessary to split the Exchange Parcels from its Parent Parcel.

(d) Dublin City Council Approval. This Agreement shall be contingent upon the City, within ninety (90) days after the acceptance hereof, obtaining Dublin City Council approval of the terms of this Agreement. If Dublin City Council fails to approve of this Agreement within such period, then this Agreement is immediately terminated.

**Section 6. Title Examination.**

(a) Within fifteen (15) days after the Effective Date, Purchaser may obtain, at its own expense and through a title company and/or agency of its choosing in its sole discretion (the "Title Insurance Company"), a letter report ("Letter Report") or an ALTA Commitment for Title Insurance (2006) (the "Title Commitment"), which Letter Report or Title Commitment shall show all recorded liens and encumbrances affecting the Property, as the case may be, and shall include copies of all documents referenced in the Letter Report or Title Commitment. The Letter Report or Title Commitment obtained by the Company shall show in the City good and marketable title to the Property, free and clear of all liens, charges, encumbrances and clouds of title, whatsoever, except the following ("*Permitted Encumbrances*"):

- i. Those created or assumed by the Company;
- ii. Zoning ordinances;
- iii. Legal highways and public rights-of-way;
- iv. Real estate taxes which are liens on the respective properties, but which are not yet due and payable; and
- v. Covenants, restrictions, conditions and easements of record which do not unreasonably interfere with Purchaser's and the Company's proposed use of the Property.

The Letter Report or the Title Commitment, as the case may be, shall fully and completely disclose all easements, rights-of-way, and any appurtenant rights and easements affecting the Property, as applicable, and shall show the results of a special tax search and examination for any financing statements filed of record which may affect the properties.

(b) Title Insurance. At the Closing (as hereinafter defined), Purchaser shall have the right to purchase, at its own expense, title insurance coverage for the Property.

(c) Title Defects. In the event that an examination of either the Title Commitment/Letter Report or the Survey discloses any matter adversely affecting title to the Property, or if title to the Property is not marketable, as determined by Ohio law with reference to the Ohio State Bar Association's Standards of Title Examination, or if the Company Exchange Parcel is subject to liens, encumbrances, easements, conditions, restrictions, reservations or other matters not specifically excepted by the terms of this Agreement, or in the event of any encroachment or other defect shown by the Survey (the foregoing collectively referred to as, "*Property Defects*"), Purchaser shall, within ten (10) days following the later of Purchaser's receipt of both the Title Commitment/Letter Report and Survey, provide the City with written notice of any such Defects to which Purchaser is objecting. The City shall have ten (10) days following receipt of such written notice to cure or remove any such Property Defects to the reasonable satisfaction of Purchaser.

#### **Section 7. Possession and Closing.**

(a) Closing Date. The Property contemplated herein shall be closed through the a Stewart Title Company, C/O Julie Ross, 259 West Schrock Road, Westerville, Ohio 43081 (the "*Closing*") within thirty (30) days following the termination of the Contingency Period, which Closing date may be extended in writing by mutual agreement of the Parties and shall be extended by such time, if any, as is necessary to cure any Property Defects as set forth in Section 3 hereof. The Closing shall be at such time as the City and Purchaser may mutually agree.

(b) General Warranty Deed. At the Closing, the City shall convey to Purchaser fee simple title to the Property, by validly executed, recordable general warranty deed, free and clear of all liens and encumbrances, except the Permitted Encumbrances applicable to the Property and as stated in the instrument.

(c) Adjustments at Closing. At the Closing, the City and Purchaser shall apportion, adjust, prorate and pay the following items in the manner hereinafter set forth:

i. Real Estate Taxes and Assessments. The City shall pay to the Franklin County Treasurer all delinquent real estate taxes, if any, together with penalties and interest thereon, all assessments which are a lien against the Property as of the date of Closing (both current and reassessed, whether due or to become due and not yet payable), all real estate taxes for years prior to Closing. Purchaser and the City acknowledge that the Property is currently listed as real estate tax exempt on the books of the Franklin County Auditor and Treasurer. Therefore, there will be no tax proration at Closing for the year of Closing. However, in the event that after Closing the Property's exempt status for the year of Closing is removed, and real

estate taxes become due and owing for the year of Closing, then the City shall be responsible for real estate taxes through and including the Closing date. Further, in that event the City agrees to pay to Purchaser, within thirty (30) days after Purchaser's written request therefore, which request shall include a copy of the real estate tax invoice and a reasonably detailed proration calculation, the City's share of prorated real estate taxes for the year of Closing. Any such proration of taxes shall be based upon a three hundred sixty-five (365) day year;

ii. The City's Expenses. The City shall, at the Closing (unless previously paid), pay the following expenses:

1. The cost of all municipal services and public utility charges (if any) applicable to the Property due through the date of Closing;
2. One-half (1/2) the fee, if any, charged by the Title Insurance Company for closing the transactions contemplated herein.

iii. Purchaser's Expenses. Purchaser shall, at the Closing (unless previously paid), pay the following expenses:

1. The cost of furnishing the Title Commitment/Letter Report for the Property, and the premium for any owner's policy of title insurance for the Property desired by Purchaser;
2. The cost of recording the general warranty deed transferring title in the Property to Purchaser;
3. The cost of any and all "due diligence" items conducted pursuant to Section 3 herein;
4. One-half (1/2) the fee, if any, charged by the Title Insurance Company for closing the transactions contemplated herein.

iv. Other Closing Costs. All other closing costs and expenses not herein referenced and not specifically attributable to either Party shall be shared equally by the Parties.

v. Brokers. Each Party represents and warrants that they have not dealt with any real estate broker or realtor in connection with the sale of the Property, and that no realtor's or finder's fees, brokerage commissions, or other forms of compensation are due to any realtor or broker in connection with this transaction.

vi. Other Documents. The Parties agree that such other documents as may be legally necessary or appropriate to carry out the terms of this Agreement shall be executed and delivered by the appropriate party to the Title Insurance Company at Closing. Such documents shall include, but not be limited to, a settlement statement, affidavits regarding liens, unrecorded matters and possession as may be reasonably requested by the Title Insurance Company.

**Section 8. Warranties And Representations Of The Parties**

(a) Seller hereby represents and warrants as follows:

i. Seller has not received any written notice or notices from any municipal, county, state or any other governmental agency or body, of any zoning, fire, health, environmental or building violation, or violation of any laws, ordinances, statutes or regulations relating to pollution or environmental standards, which have not heretofore been corrected;

ii. The execution, delivery and performance of this Agreement, and the consummation of the transaction contemplated hereby, will not result in any breach of, or constitute any default under, or result in the imposition of any lien or encumbrance against, the Property, under any agreement or other instrument to which Seller is a party or by which Seller or the Property might be bound;

iii. Seller has no knowledge of any fact or condition which would result in the termination or material limitation of the existing pedestrian and/or vehicular access to the Property from abutting public roads;

iv. No other person or entity other than Purchaser has or will have any right to acquire the Premises, or any portion thereof;

vi. From the Effective Date through and until the Closing, Seller shall not enter into any easement, lease or other contract pertaining to the Property and shall not modify or change the condition of the Property, unless Purchaser has approved of such modification or change; and

vii. Seller is not a "Foreign Person" as that term is defined in the Foreign Investment in Real Property Tax Act.

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE CITY HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE CONDITION OF OR VALUE OF THE PROPERTY. PURCHASER IS PURCHASING THE PROPERTY "AS-IS WHERE-IS" AND IS SOLELY RELYING ON ITS OWN DUE DILIGENCE AND INSPECTION OF THE PROPERTY.

(b) Purchaser hereby represents and warrants as follows:

i. That City's execution and delivery of, and performance under, this Agreement is pursuant to valid authority duly conferred upon City and the signatory hereto; and the consummation of the transactions contemplated hereby and the compliance by City with the terms of this Agreement do not and will not conflict with or result in a breach of any of the terms or provisions of any agreement, arrangement, understanding, accord, document, or instrument to which City is a party or by which City is bound, or constitute a violation of any law or ordinance to which City is bound or subject.

**Section 9. Breach of Warranties Prior to Closing.** If, during the pendency of this Agreement, either Party determines that any warranty or representation given to the other Party under this Agreement shall be untrue, incorrect or misleading, in whole or in part, the same shall constitute a default hereunder. In such event, the Party claiming default may give written notice thereof and shall thereafter have such rights and remedies as may be available as provided herein, at law or in equity, including, but not limited to, the right to terminate this Agreement and receive compensation for damages or to proceed to Closing for the completion of this transaction.

**Section 10. Miscellaneous Provisions.**

- (a) Notices. Notice from one Party to another relating to this Agreement shall be deemed effective if made in writing and delivered to the recipient's address set forth below by any of the following means: (i) hand delivery, (ii) registered or certified U.S. mail, postage prepaid, with return receipt requested, or (iii) Federal Express, UPS, or like overnight courier service. Notice made in accordance with this Subsection 10(a) shall be deemed delivered when delivered by hand, upon receipt or refusal of receipt if mailed by registered or certified U.S. mail, or the next business day after deposit with an overnight courier service if delivered for next day delivery. The Parties agree that electronic mail shall not constitute a permitted form of notice under this Subsection 10(a). All notices shall be addressed as follows:

If intended for the Purchaser, to:

Everhart Advisors  
5890 Venture Drive, Suite D  
Dublin, OH 43017  
Attn: Matt Romeo, COO

With a copy to:

Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
Columbus, OH 43215  
Attn: J. Theodore Smith, Esq.

If intended for the City, to:

City of Dublin  
5200 Emerald Parkway  
Dublin, OH 43017  
Attn: Marsha Grigsby, City Manager

With a copy to:

Frost Brown Todd LLP  
10 West Broad Street, Suite 2300  
Columbus, OH 43215  
Attn: Philip K. Hartmann, Esq.

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices; certificates, requests or other communications shall be sent.

(b) Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

(c) Survival. The warranties, representations, covenants and agreements set forth in this Agreement shall not be cancelled by performance under this Agreement, but shall survive the Closing and the delivery of the deed of conveyance hereunder.

(d) Governing Law. This Agreement is being executed and delivered in the State of Ohio and shall be construed and enforced in accordance with the laws of the State of Ohio. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts of Franklin County, Ohio.

(e) Entire Agreement. This Agreement constitutes the entire Agreement between the Parties hereto, and may not be modified except by an instrument in writing signed by both Parties, and this Agreement supersedes all previous agreements, written or oral, if any, between the Parties.

(f) Economic Development Assistance Certification. The Company has made no false statements to the City in the process of obtaining approval of the incentives described in this Agreement. If any representative of the Company has knowingly made a false statement to the City to obtain the incentives described in this Agreement, the Company shall be required to immediately return all benefits received under this Agreement pursuant Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1). The Company acknowledges that any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(F)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

(g) Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

(h) Time of Essence. Time is of the essence of this Agreement in all respects.

(i) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(j) Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and

permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the City or the Company other than in his or her official capacity, and neither the members of the legislative body of the City nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the City and the Company contained in this Agreement.

(k) Events of Default and Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any Party hereto, such defaulting Party shall, upon written notice from any non-defaulting Party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party shall upon written notice from any non-defaulting Party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the defaulting Party.

(l) Legal Authority. The Parties respectively represent and covenant that each is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. The Parties further respectively represent and covenant that this Agreement has, by proper action, been duly authorized, executed and delivered by the Parties and all steps necessary to be taken by the Parties have been taken to constitute this Agreement, and the covenants and agreements of the Parties contemplated herein, as a valid and binding obligation of the Parties, enforceable in accordance with its terms.

(m) Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, legal representatives, successors and assigns.

(n) Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(o) Invalidity. In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

(p) Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(q) Waiver. Except as otherwise provided in this Agreement, no waiver of any of the provisions of this Agreement shall be deemed, nor shall the same constitute a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing waiver. No waiver shall be binding, unless executed, in writing, by the Party making the waiver.

(r) Limit on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall City or the Company be liable to each other for punitive, special, consequential, or indirect damages of any type and regardless of whether such damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law.

(s) Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(t) Headings. The section headings contained in this Agreement are for convenience only and shall not be considered for any purpose in construing this Agreement. As used in this Agreement, the masculine, feminine and neuter genders, and the singular and plural numbers shall be each deemed to include the other whenever the context so requires.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY:

City of Dublin, Ohio  
an Ohio municipal corporation

COMPANY:

Everhart Financial Group Inc.  
an Ohio corporation for profit

By: \_\_\_\_\_  
Marsha I. Grigsby, City Manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_

Printed: Stephen J. Smith

Title: Director of Law

FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City under the foregoing Agreement during Fiscal Year 2014 have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_, 2014

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Angel Mumma  
Director of Finance  
City of Dublin, Ohio

**EXHIBIT A**

**EXHIBIT B**

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